



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

West Virginia

P O Box 3952

Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

December 3, 2018

Berkeley County Sheriff Curtis Keller
Berkeley County Sheriff's Office
510 South Raleigh St.
Martinsburg, WV 25401

Dear Sheriff Keller,

Re: November 19, 2018 Incident Involving Sheriff's Department

To whom it may concern,

Pursuant to West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* ("FOIA"), the American Civil Liberties Union of West Virginia Foundation ("ACLU-WV") requests the following materials and any related records with regards to **the November 19, 2018 incident in Martinsburg involving a 16-year-old male and members of law enforcement.**

This request includes but is not limited to all records or communications preserved in electronic or written form, *including but not limited to* correspondence, data, directives, documents, videotapes, audio tapes, e-mail, **text messages**, faxes, files, guidance, guidelines, evaluations, instructions, **messages sent on social media platforms**, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies. Please note that this request also includes a request for any communications sent using personal phones, email accounts, and social media accounts.¹ The date range for these requests, unless otherwise noted, is from January 1, 2018 to the present.

1. Any and all correspondence relating to the November 19, 2018 incident in Martinsburg involving a 16-year-old male, Trooper Derek Walker, Trooper Michael Kennedy and any other members of law enforcement, including employees of the Sheriff's Department.
2. Any and all video (including, but not limited to dashcam video) relating to the November 19, 2018 incident in Martinsburg involving a 16-year-old male, Trooper Derek Walker, Trooper Michael Kennedy and any other members of law enforcement, including employees of the Sheriff's Department.
3. The names and badge numbers of all department personnel who were at the scene November 19, 2018 incident and/or the events leading up to it in Martinsburg involving a 16-year-old male, Trooper Derek

¹ Official records in the personal control of a government official are government records and subject to sunshine laws. *See, e.g., Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) ("[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.")

Walker, Trooper Michael Kennedy and any other members of law enforcement, including employees of the Sheriff's Department.

4. Disciplinary records for any employees of the Sheriff's Department involved in the November 19, 2018 incident in Martinsburg involving a 16-year-old male, Trooper Derek Walker, Trooper Michael Kennedy and any other members of law enforcement, including employees of the Sheriff's Department.
5. Any and all documents received and/or reviewed by any person or employee at the Sheriff's Department relating to November 19, 2018 incident in Martinsburg involving Trooper Derek Walker and Trooper Michael Kennedy and a 16-year-old male.

If you are not technically the custodian of the documents described in this request, I ask that you forward the request to the custodian(s) or advise me of the identity of the custodian(s) so that I can make the request directly to that person or those persons.

Please note that W. Va. Code § 29B-1-3 requires agencies to respond to requests for public records within five business days. If you anticipate that it will take longer than five business days, or have questions about the scope of this request, please call me at (304)-345-9246.

Additionally, while W. Va. Code § 29B-1-3(5) permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit advocacy organization we request a waiver of any fees associated with the furnishing of these documents. To limit costs, electronic production of documents would be preferable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

West Virginia's Freedom of Information Act is "liberally construed with the view of carrying out" a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the "internal memoranda or letters" exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to:

Loree Stark
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952

If you have any questions or concerns, I can be reached at (304) 345-9246 or lstarkl@acluwv.org.

Regards,



Loree Stark
Legal Director, ACLU-WV*

**Licensed in Kentucky and eligible for admission in West Virginia courts pro hac vice*